DHHS- Office of MaineCare Services
Rule, State Plan Amendment, and Waiver Status Report
May 1, 2012

In APA Process*

***PLEASE NOTE THAT ALL RULES ARE PROMULGATED IN COMPLIANCE WITH EXECUTIVE ORDER OF AUGUST 24, 2011 "AN ORDER TO IMPROVE REVIEW OF THE RULEMAKING PROCESS, " detailed at: http://www.maine.gov/tools/whatsnew/index.php?topic=Gov_Executive_Orders&id=182022&v=article2011.**

****Please note: Public Hearings are no longer being held at 442 Civic Center Drive, Augusta. Please check the published rulemaking documents to find the location where the public hearing will be held for each individual rule.****

Chapter III, Section 2, Adult Family Care Services, the Department proposed a rule to permanently adopt an emergency rule that reduced reimbursement rates by 10% effective April 1, 2012. This emergency rulemaking was adopted pursuant to Public Law, Chapter 477, LD 1816, the Maine State Supplemental Budget passed by the 125th Maine State Legislature and signed into law by on February 23, 2012.

Estimated Fiscal Impact: This change is estimated to save $4,081.00 in General Fund dollars for SFY 2011-2012 and $22,007.00 for SFY 2012-2013, respectively.

Proposed:	April 24, 2012	Public Hearing:	May 22, 2012
Staff:	Derrick Grant	Comment Deadline:	June 1, 2012

Chapter II, Section 15, Chiropractic Services, the Department of Health and Human Services (DHHS) is proposing to adopt permanently previously adopted emergency changes to Chapter 101, MaineCare Benefits Manual, Section 15, Chapter II, Chiropractic Services, pursuant to Public Law 2011, Chapter 477, the Maine Supplemental Budget. The change limits reimbursement for Section 15, Chiropractic Services to twelve (12) visits per rolling calendar year for adult members. The Department is also clarifying Section 15.04, Specific Eligibility for Care, to align with the definition of rehabilitation potential earlier in the Section.

Estimated Fiscal Impact: The enactment of this proposed rule is estimated to save $157,805 for SFY 2013.

Proposed:	May 2, 2012	Public Hearing:	May 21, 2012
Staff:	Delta Chase	Comment Deadline:	May 31, 2012

Chapter II, Section 32, Waiver Services for Children with Intellectual Disabilities or Pervasive Developmental Disorders, the Department is reopening Chapter II in response to comments to the initial proposed rule. The Department is proposing to add an Appendix I to Chapter II that would provide for an increased level of home support where certain criteria of need are met. The Department proposes to add definitions in Section 32.02 for the terms "Behavioral Interventions," "Restraint" and "Seclusion." The Department is proposing to add clarifying language to Section 32.03 regarding eligibility and priority. Additionally, the Department proposes to add language specifying the individual cost limits for waiver services, as set forth in the waiver application approved by the Centers for Medicare and Medicaid. Other technical changes and formatting are being proposed.

Estimated Fiscal Impact: Total General Fund Savings for the 4th Quarter of SFY 2012 is estimated to be $149,687.02.

Proposed:	February 1, 2012	Public Hearing:	February 27, 2012
Staff:	Ginger Roberts-Scott	Comment Deadline:	March 8, 2012

Chapter III, Section 32, Waiver Services for Children with Intellectual Disabilities or Pervasive Developmental Disorders-, the Department is reopening the rule in order to make changes as a result of comment received during the comment period. The per diem rate for Home Support Family is $142.03 a day and the Department is proposing to increase it to $265.83 a day. The Department is proposing to add an increased level of support fee structure to allow children to better be supported to live in the natural home, raising the rate to $502.79 per diem.

Also, the Department proposes to increase the rate for behavioral consultation from $13.75 to $21.00 per quarter hour.

Estimated Fiscal Impact: Total General Fund Savings for the 4th Quarter of SFY 2012 is estimated to be $149,687.02.

Proposed:	February 1, 2012	Public Hearing:	February 27, 2012
Staff:	Ginger Roberts-Scott	Comment Deadline:	March 8, 2012

Chapter III, Section 50 Principles of Reimbursement for Intermediate Care Facilities, the Department proposed a rule that pertains to 3005.9 Fixed Cost Component of Chapter III, Section 50, Principles of Reimbursement for Intermediate Care Facilities for the Mentally Retarded (ICF-MR) Services. This rule increases the tax rate from 5.5% to 6%, when approved by the Centers for Medicare and Medicaid Services (CMS), per Public Law, Chapter 411, LD 1016, 125th Maine State Legislature, An Act to Restore the Health Care Provider Tax to 6%. It will be applied retroactively to January 1, 2012, when approved by CMS.

Estimated Fiscal Impact: $46,400 for fiscal year 2012.

Proposed:	December 13, 2011	Public Hearing:	January 9, 2012
Staff:	Ginger Roberts-Scott	Comment Deadline:	January 19, 2012

Chapter III, Section 68, Occupational Therapy Services, the Department is proposing a rule that will permanently adopt an emergency rule pursuant to Public Law 2011, Chapter 477, the Maine State Supplemental Budget passed by the 125th Maine State Legislature and signed into law by Governor Paul R. LePage on February 23, 2012. Part M-1 requires the Department to reduce MaineCare reimbursement of Occupational Therapy Services by ten percent (10%). Part EE-1 authorizes the Department to promulgate this rule by emergency rulemaking.

Estimated Fiscal Impact: The enactment of this emergency rule is estimated to save $7,885 for State Fiscal Year (SFY) 2012 and $42,700 for SFY 2013, respectively.

Proposed:	May 16, 2012	Public Hearing:	June 4, 2012
Staff:	Amy Dix	Comment Deadline:	June 14, 2012

Chapter II, Section 75, Vision Services, the Department of Health and Human Services (DHHS) is proposing to adopt permanently previously adopted emergency

changes to Chapter 101, MaineCare Benefits Manual, Section 75, Chapter II, Vision Services, to comply with Public Law 2011, Chapter 477, Maine State Supplemental Budget. This change limits MaineCare Services reimbursement to one (1) routine eye exam every three (3) rolling calendar years for members ages twenty-one (21) and over. Routine eye exams indicated as the standard of care for specific medical diagnoses (ex. diabetes) or for high-risk medication use (ex. Plaquenil) will continue to be covered as medically indicated.

Estimated Fiscal Impact: The enactment of this proposed rule is estimated to save $126,442 for SFY 2013.

Proposed:	May 2, 2012	Public Hearing:	May 22, 2012
Staff:	Delta Chase	Comment Deadline:	June 1, 2012

Chapter III, Section 85, Physical Therapy Services, the Department is proposing a rule that will permanently adopt an emergency rule pursuant to Public Law 2011, Chapter 477, the Maine State Supplemental Budget passed by the 125th Maine State Legislature and signed into law by Governor Paul R. LePage on February 23, 2012. Part EE-1 authorizes the Department to promulgate this rule by emergency rulemaking. Part M-1 requires the Department to reduce MaineCare reimbursement of Physical Therapy Services by ten percent (10%) effective April 1, 2012.

Estimated Fiscal Impact: The enactment of this emergency rule is estimated to save $9766 for State Fiscal Year (SFY) 2012 and $52,907 for SFY 2013, respectively.

Proposed:	May 16, 2012	Public Hearing:	June 4, 2012
Staff:	Amy Dix	Comment Deadline:	June 14, 2012

Chapter II, Section 95, Podiatric Services, the Department is proposing this rule to permanently adopt provisions of Public Law 2011, Chapter 477, Part M-1, the Maine State Supplemental Budget which was passed by the 125th Maine State Legislature and signed into law by Governor Paul R. LePage on February 23, 2012. This law requires that effective April 1, 2012, MaineCare Services reduce reimbursement of Podiatric Services by ten percent (10%). This rule will permanently adopt the emergency rule that was in place April 1, 2012.

As there is no Chapter III billing chapter for Section 95, Podiatric Services, this rulemaking necessarily updates the rule language of Chapter II with the DHHS Rate Setting website address where providers may access their current reimbursement rates.

The Department is also updating other website links in the rule to align with current Departmental procedures.

Estimated Fiscal Impact: The enactment of this proposed rule is estimated to save $37,090 for SFY 2013.

Proposed:	May 2, 2012	Public Hearing:	May 23, 2012
Staff:	Delta Chase	Comment Deadline:	June 3, 2012

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Rules Adopted or Provisionally-Adopted Since Last Status Update

Chapter III, Section 45, Hospital Services - The Department made two changes on an emergency basis: (1) the methodology for the supplemental pool for Non-critical Access Hospitals, Rehabilitation Hospitals, and Hospitals Reclassified to a Wage Area Outside Maine was changed because those hospitals are now being reimbursed under the Diagnosis Related Group methodology. The September 28, 2011 rule for supplemental pool for these hospitals distributed the pool based strictly on a discharge-reimbursement methodology, which will now be a portion of the methodology; (2) the Provider Interim Payment (PIP) for all hospitals receiving a PIP is being capped at 70%.

Staff: Derrick Grant Estimated Fiscal Impact: The reduction in the supplemental pool is $205,183, but the change in distribution methodology is cost neutral. Depending on the percentage of PIP that is ultimately determined (70-100%) there may be a temporary reduction in weekly PIP payments, but upon cost settlement there would be no change in final reimbursement.

In Draft (And approved for proposal by Governor's Office)

Chapters II and III, Section 21, Home and Community-Based Benefits for Adults with Intellectual Disabilities or Autistic Disorder- The Office of Adults with Cognitive and Physical Disabilities (OACPDS), and the Office of MaineCare Services (OMS) have worked together to amend Section 21 to remove Shared Living from the Service entitled Home Support and create a new service called Adult Foster Care to identify this as a separate service with a different type of provider known as Shared Living provider. This is part of a wider initiative that was included in the budget last year that had three phases. Phase 1 was completed July 1, 2010. Phase 2 was completed 10/1/10. These were both legislatively required rate reductions. This recommended rulemaking (Phase 3) changes the name of a service from Home Support to Adult Foster Care and provides a correct HIPAA compliant procedure code. This rule change will pull Shared Living out of Home support and establish a new service within the waiver known as Adult Foster Care. **This rule will be completed after the Chapter II that is pending Governor's approval to propose, please see below.**

Staff: Ginger Roberts-Scott Estimated Fiscal Impact: Cost Neutral

Chapter III, Section 21, Home and Community-Based Benefits for Adults with Intellectual Disabilities or Autistic Disorder-5% reduction of Agency Home Support effective 7/1/12

Staff: Ginger Roberts-Scott Estimated Fiscal Impact: $685,244.07 SFY12 and 3,654,635.00 SFY13.

Ch. III, Section 45, Hospital Services, This proposed rule seeks to permanently adopt changes already made on an emergency basis that capped the Provider Interim Payments (PIP) for all hospitals that receive a PIP and which updated the supplemental pool amount and method for distributing that pool to Non-Critical Access and other hospitals to better align with Diagnosis

Related Group reimbursement. The Department also proposes to amend the rule to prohibit reimbursement for provider preventable conditions, as required by the Affordable Care Act, Section 2702, as implemented in federal Medicaid regulations, 42 CFR Sections 436.6, 438.6 and 447.26.

Staff: Derrick Grant Estimated Fiscal Impact: The reduction in the pool is $205,183, but the change in distribution methodology is cost neutral. Depending on the percentage of PIP that is ultimately determined (70-100%) there may be a temporary reduction in weekly PIP payments, but upon cost settlement there would be no change in final reimbursement. There is an anticipated, minor cost savings associated with ending reimbursement for certain provider preventable conditions, but the amount is undeterminable.

Ch. II & III, Section 65, Behavioral Health Services, This rule is being proposed, in part, to comply with Public Law 2011, Chapter 477, LD 1816 (the Maine State Supplemental Budget) passed by the 125th Maine State Legislature and signed into law by Governor Paul R. LePage on February 26, 2012. Parts of this rule are being proposed in accordance with Part M of said Budget requiring that MaineCare Services reduce reimbursement of Opioid Treatment (Methadone) from $72.00 per week to $60.00. This change is currently in effect through an emergency rule, effective April 1, 2012.

Additionally, this proposed rule also includes proposed changes that were included in the general administrative savings portion of the Maine State Supplemental Budget. These proposed changes include the revision of several HCPC codes to CPT codes, which will allow Medicare crossover claims to be processed automatically, reducing the administrative burden for providers and the Department, thereby generating budgetary savings. It also includes language that will require a Mental Health Agency to employ or contract with an MD or DO to be the agencies' Medical Director in order to be recognized by MaineCare as an agency and be reimbursed and paid at the higher agency rate. Those providers that do not employ a Medical Director and are currently enrolled and reimbursed at the higher agency rate will need to re-enroll as an Independent Practitioner and will be reimbursed at the lower Independent Practitioner rate.

Finally, this proposed rule also includes several changes that are not related to the Supplemental Budget, but are necessary to provide clarity to providers, remove outdated information and to achieve compliance with national correct coding standards.

Staff: Amy Dix Estimated Fiscal Impact: This proposed rule is estimated to save $1,287,490.00 in State Fiscal Year (SFY) 2012 and $6,874,902 in SFY 2013.

Chapter II, Section 80, Pharmacy Services, the Department an emergency rule pursuant to Public Law, Chapter 477, LD 1816, the Maine State Supplemental Budget passed by the 125th Maine State Legislature and signed into law by Governor Paul R. LePage on February 26, 2012, which directed the Department to reduce the current limitations on brand name drugs to allow a member to receive a total of two (2) brand name drugs per month when a generic equivalent is available.

In addition, the Department made additional changes to this rule as identified in the Department's Administrative Savings proposals. These initiatives are part of a range of adjustments that the Department is making through the adopted 2012 Supplemental Budget, to include: a discontinuation of reimbursement for nutritional products through retail pharmacies and reduction of reimbursement for brand-name medications provided at a retail pharmacy from the current methodology of Average Wholesale Price (AWP) minus (-) fifteen percent (15%) to AWP minus (-) sixteen percent (16%).

This rulemaking includes other changes that achieved savings, or supported the Department in achieving savings, but are not directly included in the DHHS Supplemental Budget. This rulemaking adds criteria for early refills for mail order prescriptions in excess of a ninety percent (90%) threshold, which is expected to achieve cost savings. The Department also added Wholesale Acquisition Cost reimbursement methodology for generic, brand name and specialty medications as a reimbursement methodology. Finally, the Department is added a provision that a provider may be limited to billing based on the Federal Upper Limit (FUL) unless the Department meets FUL in the aggregate, which is automatically calculated at the point of sale. The Department requires pharmacy providers to bill at the lowest of the reimbursement methodologies listed in the rule, therefore, the inclusion of WAC as a reimbursement methodology and the addition of language allowing providers to bill based on FUL, unless the Department meets FUL in the aggregate, is expected to result in cost savings.

Finally, this rulemaking included a change that was previously enacted through an emergency rulemaking, effective February 1, 2012, that increased the dispensing fee for mail-order pharmacies from one-dollar ($1.00) to two-dollars and fifty cents ($2.50). This change is included in this rulemaking in order to avoid two separate emergency rules existing for the same section of policy at one time. The effective date for this change will begin again upon enactment of this emergency rule.

Estimated Fiscal Impact: This proposed rule is estimated to save the Department $1,384,314.00 in State Fiscal Year 2012 and $7,440,598.00 in State Fiscal Year 2013.
Staff: Amy Dix Estimated Fiscal Impact: April 1, 2012

Rules Pending Governor's Review
None

State Plan Amendment Status:

09-016, Transportation, Bus Passes-This SPA adds bus passes as a covered service when transportation providers find this the most cost effective method to provide transportation to medically necessary services.
Status: Submitted 9/30/09 "Off Clock", as CMS is reviewing a related 1915B waiver.

10-012 Updates for Categorically Needy Pages- This SPA updates and adds detail at the request of CMS for coverage pages in the state plan. No changes in coverage or benefit made.

Status: Submitted September 24, 2010 RAI Issued December 2010, responses submitted to CMS March 17, 2011. Responses Withdrawn 5/6. Responses resubmitted on 9/23/2011. **APPROVED BY CMS DECEMBER 2011.** Companion letter received **December 23, 2011** regarding the use of bundled rates within: Private Non-Medical Intuitions (PNMI), Mental Health Agency Services, Substance Abuse Treatment Services and Day Health Services. Corrective Action Plan letter sent to CMS on **February 27, 2012** to address the use of bundled rates within: Mental Health Agency Services, Substance Abuse Treatment Services and Day Health Services.

10-013-Coverage of PNMI Services- This SPA adds more detail, at request of CMS, of what is covered and who are qualified providers in PNMI facilities. No changes in coverage or benefit.
Status: Submitted September 24, 2010. RAI Issued December 2010, responses submitted to CMS March 17, 2011. Additional questions received last week of April, and a conference call was held in May, 2011 to start working through CMS questions. Responses withdrawn 5/6, currently Off Clock, IMD analysis required.

10-014-Coverage of Behavioral Health Services- This SPA adds more detail, at the request of CMS, of what is covered and who are qualified providers for behavioral health services. No changes in coverage or benefit are made.
Status: Submitted September 24, 2010. RAI Issued December 2010, responses submitted to CMS March 17, 2011. Additional questions received last week of April. Withdrew responses 5/6. Currently off clock, IMD analysis required.

10-015-Coverage of Rehabilitative Services- This SPA adds more detail, at the request of CMS, of what is covered and who are qualified providers for rehabilitative services. No changes in coverage or benefit are made.
Status: Submitted September 24, 2010. RAI Issued December 2010, responses submitted to CMS March 17, 2011. Additional questions received last week of April. Responses Withdrawn 5/6, currently Off Clock, IMD analysis required.

10-016-Coverage of Personal Care Services- This SPA adds more detail, at the request of CMS, of what is covered and who are qualified providers for personal care services. No changes in coverage or benefit are made.
Status: Submitted September 24, 2010. RAI Issued December 2010, Responses submitted to CMS March 17, 2011. Additional questions received last week of April. Responses withdrawn 5/6**.** Currently off clock, IMD analysis required**.**

11-005 Categorically Needy Companion Letter- This SPA was submitted at CMS request to answer questions about coverage and reimbursement for pages previously submitted. Formal RAI received with responses, in process.

11-008 Pharmacy- This SPA updates reimbursement for pharmacy reimbursement, to be consistent with current policy. SPA withdrawn in order to incorporate administrative savings initiatives included in the 2012 Supplemental Budget.
Status: Submitted July 1, 2011. SPA Withdrawn January 9, 2012

11-012-Hospital Inpatient- This SPA clarifies language for DRG reimbursement methodology, clarifies that rehabilitation hospitals shall continue to be eligible for non-CAH supplemental pool, and restores a temporary reduction for distinct psychiatric unit discharge rates.
Status: Submitted December 31, 2011 Informal RAI Questions Received January 31, 2012. **Formal RAI questions received on March 21, 2012.**

11-013- Hospital Outpatient- This SPA reduces prospective interim payments to meet budget limitations.
Status: Submitted December 31, 2011. Informal RAI Received January 25, 2012 and February 13, 2012. **Formal RAI questions received on March 28, 2012.**

11-014- Nursing Facility- This SPA establishes a 2% COLA as mandated by LD 1016.
Status: Submitted December 31, 2011. Informal RAI Questions Received January 31, 2012.

12-002 Recovery Audit Contractor- This SPA extends the timeframe in which the Department would establish a contract with a Recovery Audit Contractor (RAC), as required by Federal Medicaid law.
Status: Submitted February 15, 2012. **APPROVED BY CMS ON MARCH 27, 2012.**

12-003 Intermediate Care Facilities-MR (ICF-MR)- The state is requesting approval to increase the tax on ICF-MRs from 5.5% to 6% effective January 1, 2012.
Status: Submitted March 8, 2012.

Waivers

A 1915(b) Non-Emergency Transportation (NEMT) waiver was submitted to CMS in late September, with a requested effective date of April, 2012. The waiver will seek permission to have 8 regional brokers of NEMT statewide, paid on risk based contracts. Requests for proposal will be issued for these regional brokerage contracts.

A HCBS waiver to serve individuals who have "Other Related Conditions" and are otherwise eligible for ICF-ORC level of care was submitted November 1. Services included in this waiver will include home supports; community supports; employment specialist services; work supports; home accessibility adaptations; communications aids; transportation; assistive technology; consultation services and assessments; counseling and crisis services; maintenance occupational, physical and speech therapy; case management and specialized medical equipment.

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